

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DEWAYNE DAVIS,)	
Plaintiff,)	
v.)	
)	Case No.
BOARD OF EDUCATION OF WAUKEGAN)	
COMMUNITY UNIT SCHOOL DISTRICT)	Judge
NO. 60, and THERESA PLASCENCIA, in)	
her individual capacity and in her capacity)	Magistrate Judge
as Superintendent of Waukegan Community)	
Unit School District No. 60,)	
Defendants.)	

COMPLAINT AT LAW

Now comes the Plaintiff, DeWayne Davis, by counsel, Anthony Pinelli and Susan Pavlow, brings this Complaint against Board of Education of Waukegan Community Unit School District No. 60 and Theresa Plascencia, in her individual capacity and in her capacity as Superintendent of Waukegan Community Unit School District No. 60, and alleges the following in support.

INTRODUCTION

This action is being brought pursuant to 42 U.S.C. §1983 for violation of Plaintiff's rights under the Fourteenth Amendment of the United States Constitution for violation of his due process rights and under the law of the state of Illinois for violation of the Illinois Whistleblower Act, retaliatory discharge, tortious interference with a contract, as well as false light. Defendants illegally retaliated against Plaintiff because he reported misconduct to board members and investigators, namely that Defendant Plascencia intentionally withheld her

personnel file to avoid responding to a Freedom of Information Act request. As a result, Plaintiff was unlawfully terminated. The Board of Trustees approved his termination based on Plascencia's false and pretextual reasons, without allowing Plaintiff an opportunity to address his termination, despite Plaintiff's request to meet with the Board. Plaintiff made a specific request to meet with the Board in a written letter dated June 27, 2018. The Board agreed to grant him a meeting but he was given less than a day's notice to find counsel and attend. The Defendant Board held a meeting at which it was determined that cause existed for the termination of Plaintiff's employment agreement. The actions by the Board deprived Plaintiff of his employment and denied him due process rights to protect his employment. Plaintiff was not present at the meeting. Evidence was presented about him by Defendant Plascencia. The Board found that certain of Plaintiff's actions were taken to undermine and bring disrepute to the Superintendent, and that Plaintiff was disloyal to the Superintendent. The Board then concluded that an extension of the employment agreement of Plaintiff for the school year 2018-19 was not warranted. Plaintiff's agreement was not renewed for the school year 2018-19 and his employment was severed by a letter dated July 6, 2018. (Exhibit A).

As it is the policy of the Board to deal with employment and personnel matters in closed session, the Board proceeding of June 29, 2018 was held in a closed session without the public or press. The only document contained in Plaintiff's file related to the termination of his employment is an undated, unsigned memo which read as follows:

It is the recommendation of the Superintendent that Employee #19041 not be granted a contract extension for School Year 2018-2019 and that his contract with the District conclude under 105 ILCS 5/10-22.4 effective naturally at the end of the current school year. As your Superintendent, I have lost confidence in the judgment, loyalty, candor and support of this subordinate. The Superintendent recommends the Board adopt of the following Resolution:

WHEREAS, the Board finds that certain actions of Employee #19041 were taken to undermine and bring disrepute on the Superintendent and other members of the Administration for impermissible reasons; and

WHEREAS, the Board finds that Employee #19041 showed a lack of candor and loyalty in his treatment of the Superintendent and other members of the Administration and failed to address management and philosophical concerns in a collaborative and positive manner; and

WHEREAS, the actions and inactions of Employee #19041 have contributed to a disclosure of confidential employee information in violation of Board Policy 4303, which provides for adverse personnel action up to and including termination; and

WHEREAS, the Board has considered the denials of Employee #19041 to the matters asserted regarding his actions and omissions and weighed the evidence presented in closed session giving fair weight to the denials of the Employee;

NOW THEREFORE, the Board finds and concludes that:

1. The foregoing recitals are adopted herein by reference and accepted as part of this Resolution; and
2. An extension of the employment of Employee #19041 for School Year 2018-2019 is not warranted, required or in the best interest of District #60, and the Employee is hereby dismissed and non-renewed for School Year 2019.

(Exhibit B)

In July of 2018 Nicholas Alajakis served as the Chief of Staff for Waukegan Public Schools. A reporter contacted him seeking information about Plaintiff's discharge. Under FOIA, Alajakis provided a copy of the Resolution which alleged

that Plaintiff had acted to undermine the credibility of the Defendant Plascencia and bring disrepute upon her and other members of the administration. He also identified Employee #19041 as DeWayne Davis. It further alleged that Plaintiff lacked candor and loyalty. The reporter then wrote an article published in the News-Sun newspaper in July of 2018 quoting the Resolution as stating that Plaintiff disclosed confidential information and denied doing so to the Board. (Exhibits C, D, E).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to the Fourteenth Amendment to the United States Constitution.

2. Plaintiff's state law claim is brought pursuant to the law of the State of Illinois. Plaintiff is currently a citizen of the State of Oregon and Defendants reside in Illinois. Plaintiff's salary on the date of his termination was \$172,000. This Court also has jurisdiction under 28 U.S.C. 1332(a)(1) Diversity Citizenship.

3. Jurisdiction over the constitutional causes of action lies under 28 U.S.C. §1331 and the Court has jurisdiction over the state claim pursuant to 28 U.S.C. §1367.

4. The events giving rise to the claims all occurred in this district. Therefore, venue is proper pursuant to 28 U.S.C. §1391(b).

5. Plaintiff is a citizen of the state of Oregon where he lives and works.

6. Defendants are located in Lake County, Illinois.

PARTIES

7. Plaintiff DeWayne Davis (“Davis”) was employed as the Deputy Superintendent of Strategy and Accountability for Waukegan Community Unit School District No. 60. He is a citizen of the United States at all times relevant to this suit.

8. Defendant Waukegan Community Unit School District No. 60 (“District 60”) is a public school district within the State of Illinois. The District serves approximately 17,000 students.

9. The Waukegan Community Unit School District No. 60 Board of Education (“Board”) is a publicly elected board of seven (7) members tasked with the management and decision-making for District 60 under the laws of the State of Illinois.

10. Theresa Plascencia (“Plascencia”) was the Superintendent for District No. 60 at all times relevant to this Complaint.

FACTS

11. Davis is an educator who has worked in multiple schools throughout his 27 year career. He was the recipient of several awards, including Educator of the Year in 2009 from the Stoval Educational Foundation. There were no disciplinary actions taken against Davis during his tenure at District 60.

12. In June, 2016, Davis was hired as the Deputy Superintendent of Strategy and Accountability for District 60. He entered into an employment agreement (“Agreement”). The agreement outlined compensation and benefits, and included terms for a salary increase in the second year and had no termination

provision or dates. *See*, agreement attached as Exhibit F. Davis began work on July 1, 2016.

13. Davis supervised three departments: business services, human resources, and information technology. Further, he was the second in command and the proxy for the Superintendent.

14. He received exceptional reviews and no disciplinary actions.

15. Plascencia was his direct supervisor.

16. In March, 2017, Plascencia prohibited school administrators from speaking with the Board directly regarding school matters. (Exhibits G, H, I).

17. In April, 2017, media outlets reported that Plascencia had received a contract amendment after only ten months on the job. Under the amendment, she would receive a \$25,000 increase in salary, for an annual salary of \$235,000, as well as a four percent (4%) annual raises based on the increase and bonus pay. This contract was significantly higher than her predecessor made after ten (10) years at District 60.

18. In May of 2017, the Lake County News Sun submitted a Freedom of Information (“FOIA”) request to District 60 seeking Plascencia’s resume and other application materials.

19. On May 23, 2017, Plascencia texted Davis asking the whereabouts of her file. Davis advised it was in his office, as all personnel files for executive cabinet members had previously been stored in a locked cabinet at Davis’ office at Plascencia’s direction. Davis was unaware of the FOIA request and asked

Plascencia about her inquiry. She replied, “oh nothing I just wanted to know where my file was.”

20. The next day, May 24, 2017, Plaintiff received a message requesting that he bring the file to the Superintendent’s office.

21. Plaintiff then discovered that the file was not in his office. Plascencia’s file, which contained her job application, resume, and other forms related to her hiring and work, was missing. Plaintiff advised Plascencia of that fact. The District’s counsel, Thomas Morris, then responded to the FOIA request that the file could not be located.

22. As a result, District 60 failed to comply with the FOIA request. Instead, District 60 filed a police report regarding the missing file despite the fact that employee, Nicholas Alajakis (“Alajakis”), Chief of Staff, and Thomas Morris, General Counsel, had a copy in their possession.

23. District 60 also instituted an internal investigation. Despite her personnel file being the impetus for the FOIA request and subsequent investigation, Plascencia appointed her subordinates as the internal investigators. Specifically, she named Sadara DeVonne (“DeVonne”), an attorney who worked as the Director of Employee Relations, and William Newby (“Newby”) the Deputy Superintendent of Operations.

24. Plascencia was advised that the assignment created a conflict of interest and was told by all administrators to obtain conflict-free investigators, yet she refused to do so.

25. Prior to the internal investigation, Davis, Newby and Alajakis were in Davis's office. Alajakis told Davis and Newby that he had the file and an electronic copy of the file. When Alajakis was questioned by Davis as to why he did not release the file per the FOIA, Alajakis told Davis and Newby that the Superintendent did not want her information published.

26. During the course of the investigation, Plaintiff was interviewed. He advised Newby that Alajakis had a copy of the missing file. During the interview, Newby communicated that he already knew that Plascencia had her file. Alajakis told Plaintiff and Newby that he had taken the file and Plascencia asked him to retrieve it.

27. Nonetheless, during a closed session with the Board, Newby presented findings of the investigation to the Board and it concluded that the investigation was inconclusive.

28. In April, 2018, DeVonne informed the Board of unethical practices of Plascencia and Morris, in that they willfully failed to comply with the FOIA request. DeVonne advised the Board that Plascencia hid her personnel file from public view and later claimed it was stolen in order to keep the details of her previous employment at Chicago Public Schools, as well as her marital status and effort to obtain a doctoral degree, from being known. DeVonne disclosed that Plascencia's employment application, which was sought by the FOIA request, was forwarded to Alajakis on April 5, 2017, approximately a month before the FOIA request. Further, DeVonne revealed that both Alajakis and Morris admitted during

investigative interviews that the information was withheld at Plascencia's direction. Newby and DeVonne had recreated the file. The internal investigation concluded that Plascencia had strong motivation to conceal her own personnel file in light of the fact that she misrepresented her previous experience with Chicago Public Schools.

29. Plascencia had been under investigation by the Chicago Public Schools' inspector general and was demoted and received a pay cut before leaving her employment to join District 60.

30. DeVonne's report reignited the issue, and the Board instituted a second investigation and following its receipt, the law firm Hodges, Loizzi, Eisenhammer, Rodick and Kohn LLP was charged with conducting the investigation.

31. Despite Plascencia's previous directive, Davis discussed the matter with Board members, including Anita Hanna, Brandon Ewing, Miguel Rivera, Richard Riddle and Jeff McBride in May of 2018.

32. In June 2018, Davis was scheduled to meet with two of the outside lawyers hired by the Board from the law firm Hodges, Loizzi, Eisenhammer, Rodick and Kohn LLP. On June 21, 2018, Plascencia emailed Davis indicating she was advised by one of the attorneys conducting the investigation that Davis was scheduled to be interviewed the next day, but was not available. In an email, she stated, "the interview is not optional." A subsequent meeting was scheduled for June 27, 20218 between Davis and the lawyers investigating. Also on June 27,

2018, Plascencia told Davis not to forget about his rescheduled meeting. On that day she asked Davis what he was going to say to investigators. Davis replied, “I’m going to tell them the truth.”

33. On June 27, 2018, Davis met with investigators for approximately two hours. The investigators asked about DeVonne’s letter and what he knew about it. During the meeting, investigators did not take notes. They asked leading questions. For example, they asked, “you don’t know the superintendent took her file, do you?” Davis advised the investigators that Alajakis stated he had Plascencia’s file because Plascencia did not want her file made public.

34. Following the meeting with the attorneys on June 27, 2018, Davis went to Plascencia’s office. When Davis made his presence known, Plascencia directed him to the conference room where he waited approximately twenty minutes. Davis believed that Plascencia had forgotten about him waiting in the conference room and returned to her office. Upon entering Plascencia’s office Davis could hear a speaker phone conversation from Tom Morris’s office, which is attached to Plascencia’s office, between Morris, Plascencia and the investigating attorneys in which Davis’s answers provided in the meeting with the investigators were being repeated. Plascencia and attorney Morris were in the office. Davis listened to the conversation then returned to the conference room and waited.

35. Upon entering the conference room, Plascencia terminated Plaintiff effective immediately and advised that he should remove his personal belongings.

36. On June 27, 2018, Davis made a written request to meet with the Board of Education regarding the false allegations against him. He subsequently sent the written request to the Superintendent Plascencia, General Counsel, and the Board President.

37. On June 28, 2018 when told of the date of June 29, 2018 for the meeting by Morris, Davis requested a continuance to get counsel. Morris told him that was not possible as the Board would not meet again until the beginning of the following school year.

38. On June 29, 2018, at a special meeting, evidence was heard, and Plascencia asked that he be terminated. The Board of Education confirmed Plascencia's recommendation to terminate Davis. (Exhibit B).

39. Although Davis did not attend the meeting, the Board resolution stated that Davis's denials were not credible and "non-renewed" his employment agreement for the school year 2018-19. Thus, his employment ended on June 30, 2018.

40. On July 6, 2018, Plascencia sent a letter to Davis advising him that the Board had concluded that "sufficient cause existed" for his termination and that the employment relationship be severed effective at the end of the 2017-18 school year. (Exhibit A).

COUNT I
42 U.S.C. §1983 – 14th Amendment
Taking of Property Without Due Process

41. Plaintiff hereby realleges and reincorporates paragraphs 1 through 40 above.

42. Plaintiff was employed under the terms of an Agreement that had no date and included a benefit that allowed the parties to extend the term of the Agreement. (Exhibit F).

43. The offer of employment extended to Plaintiff contained the following terms which he accepted: Salary of \$172,015, benefits, the potential for increased wages in a subsequent year.

44. Prior to his termination, Davis requested a hearing with the Board based on one day's notice, and he was denied a continuance.

45. However, Plaintiff's mutually agreed upon benefits were taken away as the result of the Board's disciplinary action in June of 2018 without procedural due process.

46. Plaintiff was never afforded any notice of the formal charges against him or an opportunity to answer them before the Board terminated his Agreement. Plaintiff made a specific request to meet with the Board in a written letter dated June 27, 2018. The Board agreed to grant him a meeting but he was only given a day's notice to find counsel and attend. The Board reviewed evidence regarding allegations against Plaintiff provided by Plascencia. The Board made a finding of

“cause for non-renewal of employment” based in part on the lack of credibility by Davis who was not present at the meeting.

Thus, the special meeting by the Board denied Davis his rights to a fair pre-termination hearing which directly led to his loss of employment.

47. Plaintiff’s interest in the continued enjoyment of the right to practice his profession has been substantially harmed by the Board’s actions, and Plaintiff has suffered significant monetary loss, emotional pain and diminished personal and professional standing in the community as a result of the fact that the Board confirmed Plascencia’s termination recommendation without providing Davis a fair hearing.

48. In reaching its conclusion, the Board relied upon and cited an Illinois Statute 105 ILCS 5/24-10 which specifically outlines hearing requirements for dismissals of teachers by school districts, thereby providing for due process and a pre-termination hearing of cause for discharge.

COUNT II
Illinois Whistleblower Act
740 ILCS 174/20

49. Plaintiff hereby realleges and reincorporates paragraphs 1 through 48 above.

50. The Illinois Whistleblower Act prohibits employers from taking retaliatory action against an employee “for refusing to participate in an activity that would result in a violation of State or Federal law, rule or resolution, including but not limited to violation of the Freedom of Information Act.” 740 ILCS 174/20.

51. Plaintiff reported to investigators that Plascencia and others intentionally failed to comply with a FOIA request, a suspected violation of the state statute.

52. The same day that Plaintiff reported the misconduct to investigators, Defendants retaliated against him for making the report by terminating him.

53. Prior to that time, District 60 intended to keep Plaintiff as Deputy Superintendent.

54. Defendants' actions are in direct violation of the Illinois Whistleblower Act, 740 ILCS 174/20.

55. Plaintiff's protected activity was a contributing factor in Defendants' retaliatory actions.

56. Defendants' retaliatory actions were willful, intentional, and/or done maliciously or with callous disregard for Plaintiff's rights.

57. As a result of Defendants' unlawful actions, Plaintiff suffered loss of future income and benefits, damages to career prospects and future employment, damages to his reputation, emotional distress, humiliation, and embarrassment.

58. Plaintiff has been injured and damaged by the adverse employment actions Defendants have taken against him.

COUNT III

Tortious Interference with a Contract

59. Plaintiff hereby realleges and reincorporates paragraphs 1 through 58 above.

60. Plaintiff had a valid and enforceable contract with District 60 through

at least 2019. The Agreement details the benefits and compensation, as well as salary increases for subsequent years of employment.

61. The Defendants were aware of the contractual relationship created when Plaintiff accepted the offer of employment in the letter of June 13, 2016 as Deputy Superintendent of District 60. It included a base wage of \$172,065, health and dental insurance, sick leave, vacation, personal days and life insurance. The Agreement had no definite term. It provided for a salary increase in the second year and had no term of years or specific length. It had no termination provision. The only date contained in the Agreement was the commencement date of February 1, 2016.

There were no provisions for termination of the Agreement by the passage of time. There is no evidence that a specific action was required to terminate the Agreement. (Exhibit F). Thus the document constituted an enforceable Agreement between the parties once it was accepted by Plaintiff. It was a contract creating rights in his employment by the Defendants.

62. Plaintiff and the Defendants acted as if a contract was in place and held a special closed session meeting to consider his employment. Defendants gave him a one day notice, and their attorney stated it was a special meeting and would be the only one held in July. Plaintiff was given a notice of the meeting without a copy of the allegations against him, and when he requested time to seek counsel and appear, they denied his request.

Further, the Defendants held the hearing without his presence, and pursuant

to Illinois Statute 105 ILCS 5/10-22.4 terminated his employment for “cause” under a “Board policy 4303.” They weighed evidence in closed session and somehow made a credibility finding as to “denials” by Plaintiff, who was not in attendance.

63. Defendant Board’s recognition of Plaintiff’s right to a hearing is a further admission that the employment Agreement is a contract.

64. There is no record of the evidence or discussions other than the resolution which finds Plaintiff to be a liar and accuses him of acts and omissions of disloyalty with no particulars as to how or what he did that was disloyal.

65. Defendants intentionally and without justification induced a breach of the contract when they “non-renewed” the Agreement on the basis of “disloyalty” to Defendant Plascencia.

66. As a result, Plaintiff was damaged by loss of employment, pay, benefits, and damage to reputation.

COUNT V False Light

67. Plaintiff hereby realleges and reincorporates paragraphs 1 through 66 above.

68. Defendant Board conducted a special meeting on June 29, 2018 to consider the recommendation by Defendant Plascencia to terminate Plaintiff’s employment.

69. Based on Defendant Plascencia’s statements that Plaintiff lacked candor and loyalty and took actions to undermine and bring disrepute on the Superintendent and the Administration for impermissible reasons, the Board

“dismissed and non-renewed for School Year 2019” the Plaintiff.

70. Further, although it never heard from Plaintiff, the Board weighed his denials to the unnamed matters asserted but obviously rejected them in making its conclusion.

71. The Board’s findings were published and then republished in a newspaper article of July 27, 2018. (Exhibit D).

72. The words published by Defendant Board were of sufficient nature to infer that Plaintiff was lacking in integrity to discharge the duties of his employment and lacked ability in his profession.

73. The statements by Defendant Plascencia to the Board and the Board’s adoption and publication of those statements placed Plaintiff in a false light before the public and invaded his privacy.

74. In finding that Plaintiff’s alleged denials of improper conduct, without his appearance before the Board, the conduct of the Board was a reckless disregard for the truth and was made with actual malice.

75. The statements published by the Defendant Board placed Plaintiff in a position in which a reasonable person could conclude that he was incompetent in his work and unworthy of belief and thus cast him in a false light and invaded his privacy.

76. Further, Plaintiff suffered damage to his reputation in his lifetime occupation of Educational Administration, as well as lost wages.

WHEREFORE, Plaintiff respectfully requests that this Court enter a Judgment against Defendant as follows:

- A. A judgment that his rights under the Illinois Whistleblower Act were violated;
- B. Reinstatement with full salary and benefits;
- C. Any actual monetary losses sustained by Plaintiff as a direct result of the violations including backpay and front pay;
- D. The interest on the amounts described in the items listed above;
- E. Restoration of make-whole relief for the loss of any employment benefits or other compensation denied or lost by the Plaintiff;
- F. An order prohibiting the Defendant from any further prohibited discrimination and/or retaliation against him;
- G. Compensatory, liquidated, and punitive damages against the Defendants;
- H. An award of reasonable attorneys' fees;
- I. Costs incurred in filing and prosecuting this action, and;
- J. Such additional relief the Court deems just and proper.

Respectfully submitted,

s/Anthony Pinelli
One of the Attorneys for Plaintiff

Anthony Pinelli
Law Office of Anthony Pinelli
53 West Jackson Boulevard, Suite 1215
Chicago, Illinois 60604
312-583-9270
apinelli@pinelli-law.com

Susan M. Pavlow
Law Office of Susan M. Pavlow
53 West Jackson Boulevard, Suite 1215
Chicago, Illinois 60604
312-322-0094
smpavlow@mac.com

JURY DEMAND

Plaintiff demands trial by jury.

s/Anthony Pinelli
One of Plaintiff's Attorneys